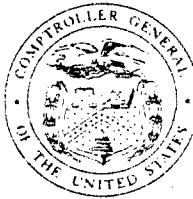


18555

Graham
PL1**DECISION****THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-201166

DATE: June 23, 1981

MATTER OF: Delta Systems Consultants, Inc.

DIGEST:

1. GAO will not reevaluate technical proposals, but rather will examine record to determine whether judgment of contracting agency was clearly without reasonable basis. Disagreement by protester does not itself establish that evaluation clearly has no reasonable basis. There is no basis for favoring proposer with presumptions based merely on prior experience, since proposals must demonstrate compliance with essential RFP requirements.
2. GAO will not conduct investigations to establish whether protester's speculative statements are valid.
3. No preselection of awardee prior to best and final offers is shown where record reveals agency evaluation after submission of best and final offers which considered merits and weaknesses of competing proposals and various awardee and agency actions did not evidence preselection.
4. Bias of two members of evaluation committee is not established where record does not demonstrate that agency actions (for example, reduction of technical scores from one round to next round even though proposal was unchanged) are "only explainable by bias," as protester contends.
5. Increase in project funding level, number of manuals to be produced, and workshop schedule of solicitation communicated only to eventual awardee were material changes

[Protest of AID Contract Award]

017335

requiring Government to amend solicitation and seek new offers. Failure to do so does not require corrective action since protester was not prejudiced.

6. Protest concerning small business size status of awardee will not be considered by GAO since authority to conclusively determine size status is vested in Small Business Administration.

Delta Systems Consultants, Inc. (Delta), protests the award of a cost-plus-fixed-fee contract to NTS Research Corporation (NTS) under request for proposals (RFP) No. AID/DSPE 1016, issued by the Agency for International Development (AID), under a small business set-aside. The contract is to secure necessary modifications and disseminate the United States Census Bureau's COBOL CONCUR computer editing system to all interested AID countries and to train the appropriate personnel in these countries.

Eight proposals were received in response to the RFP. After initial evaluation, the competitive range was established with three firms, including Delta and NTS. These offerors were invited to participate in oral discussions. Revised proposals were then received and were scored by the evaluation committee. By unanimous agreement, NTS was preliminarily recommended. Best and final offers were solicited. Delta alone revised its technical proposal. The evaluation committee reviewed the revised Delta technical proposal as well as all best and final offers and, again, unanimously agreed that NTS should be awarded the 2-year contract. The contract was awarded to NTS on the basis of a superior technical proposal despite a higher proposed cost.

Delta summarizes its protest by stating that, in view of its experience, its proposal was clearly superior to those of its competitors, so under any fair and impartial system of procurement, the contract should have been awarded to Delta. Delta's specific allegations are that AID selected NTS prior to the

submission of best and final offers, that at least two members of the evaluation committee were biased against Delta and these biases were reflected in grossly unfair and inconsistent evaluations, and that during the award process, purposive actions were taken by AID officials that denied Delta an equal opportunity to secure the contract by giving favorable treatment to Delta's competitors. Also, Delta makes several miscellaneous allegations that all of the AID actions Delta alleged taken together constitute an unacceptable pattern of irregularities and bias, and that NTS is "probably" not a small business concern.

After a review of the record, we find that AID's determination that NTS's proposal was superior to Delta's was not unreasonable. We find that the protester has not demonstrated AID preselection of NTS or bias. While we recognize that Delta was not treated equally in all aspects of the contract award process, since this unequal treatment did not prejudice the protester, no corrective action will be required. We find that the protester has not demonstrated a pattern of AID irregularities and bias and we will not consider the protester's allegation that NTS "probably" is not a small business concern, since that is a matter for the Small Business Administration (SBA). Therefore, we deny the protest in part and dismiss it in part.

SUPERIORITY OF DELTA'S PROPOSAL

Delta, relying on its experience, alleges that the superiority of its proposal entitled Delta to the award. This Office will not reevaluate technical proposals, but rather will examine the record to determine whether the judgment of the contracting agency was clearly without a reasonable basis. Disagreement by the protester does not in itself establish that the evaluation clearly has no reasonable basis. Macro Systems, Inc; Richard Katon & Associates, Inc., B-195990, August 19, 1980, 80-2 CPD 133.

In the evaluation summaries and scoresheets, AID apparently recognized that Delta had many technical advantages over the other proposers, but indicated that Delta's proposals lacked sufficient

detail on material matters--even after this deficiency was pointed out during oral discussions. The solicitation states that the proposals "should state clearly HOW you intend to pursue the accomplishment of the program" and emphasizes the importance of "clarity, completeness, and directness." Based on the record, including the proposals, we cannot conclude that it was unreasonable for AID to find Delta's proposals less detailed than those of NTS.

We have held in similar situations that there is no basis for favoring a proposer with presumptions based merely on prior experience, since the proposals must demonstrate compliance with essential RFP requirements. PRC Computer Center, Inc., et. al., 55 Comp. Gen. 60 (1975), 75-2 CPD 35. Even highly technically qualified proposers must demonstrate in detail compliance with essential RFP requirements where the RFP stresses the importance of such detail. Therefore, since AID's RFP stressed the importance of detail in the technical proposals and Delta's proposal was deficient in this regard, we find that AID's determination that Delta's proposal was not superior for this reason was not unreasonable.

SPECULATIVE ALLEGATIONS

Delta makes a number of speculative allegations. It complains of a "potential source of bias" in two members of the evaluation committee resulting from an allegedly hostile reaction to an earlier Delta inquiry via its Congressmen, refers to a "clearly prejudicial tone" in AID's evaluation comments, and claims that unusual efforts were undertaken by AID to assure that Delta did not become aware of the award decision so that a more meaningful protest could have been filed. Further, Delta alleges that one of the evaluation committee members departed AID before best and final offers were received, while her low scores for Delta were retained.

We have long held that our Office will not conduct investigations to establish whether a protester's speculative statements are valid. Photonics Technology, Inc., B-200482, April 15, 1981, 81-1 CPD 288. These allegations, which are refuted by the agency, are

all speculative without any independent verification in the record. Therefore, we will not consider these allegations.

PRESELECTION

Regarding Delta's first major contention that NTS was preselected prior to the submission of the best and final offers, we have reviewed the record and find that there was no preselection.

Delta cites NTS's "help wanted ad" for COBOL programmers with foreign language capability which appeared prior to the time that the best and final proposals were due, but NTS explained that advertising for positions contingent upon contract award is a standard practice in the consulting business to ensure efficient startup. Delta also points to AID's decision to increase the project funding amount nearer to NTS's high proposed cost and above the original project funding level. AID has explained that the increase in the project funding level was due to its failure to include in the first estimated budget a certain fixed-fee item and an underestimated travel budget due to neglect of a planned increase in air fares.

Further, Delta claims that AID communicated certain information about proposal modifications to NTS, but did not communicate similar information to Delta. AID explained that it had engaged in discussions with both NTS and Delta, and that the differences in the communications were due to the fact that AID was seeking to reduce NTS's budget, which was considered high, to satisfy the solicitation cost requirements; this was not done with Delta because Delta's cost proposal was considered reasonable. We note that the discussions were properly conducted to permit all offerors to remedy proposal deficiencies, even to pointing out the necessity for specific cost reductions. Photonics Technology, Inc., supra; WASSKA Technical Systems and Research Company, B-189573, August 10, 1979, 79-2 CPD 110.

In conclusion on this point, the record reveals an evaluation by AID after the submission of best and final offers which considered the merits and weaknesses of the competing proposals, and we find no basis for a conclusion that AID had preselected NTS's proposal.

BIAS IN EVALUATION

Delta's second major allegation--that at least two members of the evaluation committee were biased against Delta which was reflected in grossly unfair and inconsistent evaluations--is not supported by sufficient evidence in the record. Delta points to a number of actions that it asserts are "only explainable by bias." One of these actions is the award of the contract to NTS. Delta claims that NTS has no experience with CONCUR or any software packages of similar size and complexity, has limited experience with COBOL, and no apparent experience in conducting workshops in developing countries. In comparison, Delta is very experienced in these areas and its price was 20 percent less than NTS's.

The solicitation did not require CONCUR experience. The record shows that Delta was given credit for its CONCUR experience, while AID determined that NTS had sufficient other experience to satisfy the selection criteria. In its revised technical proposal, NTS stressed the substantial COBOL experience of the performance staff it was making available. NTS proposed joint staffing with the International Fertility Research Program which seems to have considerable experience in conducting workshops in developing countries.

As to the difference between the cost proposed by Delta and that of NTS, the RFP stressed the primary importance of technical factors over cost. Under such circumstances, award of a contract to a higher cost offeror on the basis of a superior technical proposal is not legally objectionable where the record supports the reasonableness of the procuring agency's assessment and the evaluation criteria stressed the importance of technical factors and clearly permitted award to the higher cost offeror. E-Systems, Inc., B-191346, March 20, 1979, 79-1 CPD 192.

Delta claims bias because Delta's technical scores were lowered from one round to another as to unchanged aspects of its proposals. Delta points to downgrades by two evaluation committee members in three categories: "foreign language experience," "project deadlines being met," and "workshop experience." However, one of these members explained during the evaluation that she had given Delta the "benefit of the doubt" in the first round, but not in the second. Overall, Delta's technical score dropped only 1.5 points between those rounds. We have held in the past that each evaluation is separate and only the results of each evaluation are relative, WASSKA Technical Systems and Research Company, supra. An agency does not act arbitrarily merely because it reduces an offeror's technical score between rounds. Buffalo Organization for Social and Technological Innovation, Inc., B-196279, February 7, 1980, 80-1 CPD 107.

Delta also points to arbitrary low scores given to Delta's proposal in the categories of "prior workshop experience" and "project deadlines being met" and unjustified high scores to NTS. Specifically, Delta refers to the scores by two evaluation committee members of 3 and 3.5 out of 10 for "prior workshop experience," while one of these evaluators gave NTS 10 points in this category, even though NTS never gave an overseas workshop. Delta complains that one evaluator gave Delta only 5 out of 10 points for project "deadlines being met," with the other four evaluators giving Delta less than the full 10 points, despite the fact that only one of its minor reports under a past AID contract was late. Further, NTS got 10 points from one evaluator in that category with no prior NTS-AID contracts to be evaluated.

While Delta's observations about NTS are correct, they ignore the fact that NTS proposed joint staffing with the International Fertility Research Program which does have extensive overseas workshop experience and has had many contracts with AID in the past. Further, neither the RFP nor the scoresheets limit the workshop experience to "overseas" workshops (though there is a separate, lesser weighted, "lesser developed

country workshop prior experience" category), nor do they limit the "project deadlines being met" category to contracts only with AID. Also, we do not see in the record the 3.5-out-of-10 score for Delta's "prior workshop experience" referred to by Delta.

Delta does point to one evaluator's scoresheet notes under "prior workshop experience" which state that Delta had given no regional workshops and done only on-the-job training. The record does indicate that this may have been inaccurate. However, only 7 more points in this category were possible from this evaluator. NTS had 57 more points than Delta in the overall evaluation, so that the changing of this score for prior workshop experience would not have affected Delta's competitive standing. Even assuming bias existed, where there is no indication that it affected the protester's competitive standing, the protest has been denied. Optimum Systems, Inc., 56 Comp. Gen. 934 (1977), 77-2 CPD 165.

Delta again points to the communication of certain information about proposal modifications to NTS, but not to Delta. Because of our above discussion on alleged preselection that what occurred constituted the regular discussion process, we similarly find nothing objectionable here.

Delta sets out four miscellaneous minor errors--such as the doublespace typing of NTS's proposal contrary to the RFP instructions--as evidence of AID bias. We consider such minor errors to be inconsequential, and we have held in the past that such minor flaws do not justify the rejection of a proposal unless the accumulation of minor flaws justifies the conclusion that the proposal is so materially deficient that it cannot be made acceptable except by major revisions and additions. Macro Systems, Inc.; Richard Katon & Associates, Inc., supra. We find that the accumulated minor flaws pointed out in NTS's proposal by Delta do not justify such a conclusion.

Finally, Delta alleges that there appear to be two cases in which the total score of the evaluation does not equal the individual scores of the line items given, and in both cases the addition

errors are detrimental to Delta. However, the two alleged errors in totaling evaluation scores are not evident from the record. As long, though, as these errors have not altered the relative positions of the offerors, there would be no grounds to grant the protest on that basis. Datapoint Corporation, B-194277, September 14, 1979, 79-2 CPD 198.

This record does not support the protester's allegations of bias, or that any alleged errors would have altered the relative positions of the offerors.

UNEQUAL TREATMENT

Delta's third principal allegation is that purposive actions were taken by AID officials that denied Delta an equal opportunity to secure the contract. In partial support of this allegation, Delta claims that no effort was made to rate its best and final offer. However, while the best and final offers were not formally rescored, as mentioned above, the record shows that Delta's and the other best and final offers were reevaluated by the evaluation committee.

Delta asserts that AID communicated to NTS alone that the number of manuals required under the contract had been reduced from 2,000 to 750, that the date of the first workshop had been slipped by 1 month, and that the funding level of the project had been increased. A contract award must reflect the requirements upon which the competition was based and a material change in Government requirements may not be negotiated only with the eventual awardee. When there is such a change, the Government is required to amend the solicitation and seek new offers. Ford Aerospace & Communications Corporation, B-200672, December 19, 1980, 80-2 CPD 439. For example, we have held that changes to delivery schedules, time of performance, and price ceiling requirements are material changes. Lawrence Johnson & Associates, Inc., B-196442, March 11, 1980, 80-1 CPD 188; Bristol Electronics, Inc., et al., 54 Comp. Gen. 16 (1974), 74-2 CPD 23. We believe AID's changes in the number of manuals required,

the schedule for workshop performance, and the funding level are material changes, which should have been communicated to all the offerors.

However, we will not recommend corrective action since Delta was not prejudiced. Where proposals were not evaluated on a common basis, but the protester was not thereby prejudiced, the award will not be disturbed. Data 100 Corporation - Reconsideration, B-185884, October 21, 1976, 76-2 CPD 354. First, Delta has indicated that the reduction in the number of required manuals would have resulted in only a small reduction in its costs, and AID stated that this cost savings would not have altered the decision to award the contract to NTS. Second, Delta has acknowledged that the slipping of the first workshop by 1 month would have had no impact other than the possibility of some clerical overtime. Finally, while Delta claims that it was encouraged to reduce its costs to meet the old project funding level, inducing it to offer a "dramatic change" in the workshop formats, Delta believes that its proposal "will set the standard for whichever contractor carries out the remaining * * * months of the contract life."

Finally, we note the AID contracting officer's later statement that NTS had a significantly superior technical proposal and that it was in the best interests of the Government to pay a higher cost. Under these circumstances, we cannot find that Delta was prejudiced by these events, and we will not recommend corrective action on this basis.

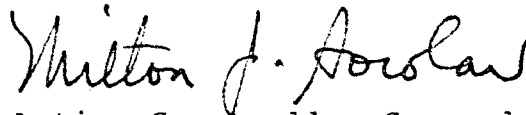
MISCELLANEOUS ASSERTIONS

Delta further makes two miscellaneous assertions. First, Delta broadly asserts that all of the above actions taken together constitute an unacceptable pattern of irregularities and bias which have significantly undermined the integrity of the AID procurement process and done substantial harm to Delta. However, each action taken has been adequately

explained by the Agency or inadequately supported by Delta--except for actions where Delta was not prejudiced. This does not constitute a "pattern" of irregularities or bias.

Second, Delta has asserted that NTS is "probably" not a small business concern as required in the RFP and as defined in the regulations of the SBA. However, a protest concerning the small business size status of an awardee will not be considered by GAO since the authority to conclusively determine size status is vested in the SBA. JAN Devices, Inc., B-202435, March 31, 1981, 81-1 CPD 243. Therefore, we dismiss this allegation.

The protest is denied in part and dismissed in part.

A handwritten signature in dark ink, reading "Milton J. Aorolan". The signature is written in a cursive, flowing style.

Acting Comptroller General
of the United States